

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 5209 of 2005(T)

PETITIONER:

THERES V.U., W/O. LATE T.C.KORA,
LAST GRADE SERVANT, ST.STEPHEN'S COLLEGE,
UZHAVOOR, KOTTAYAM DISTRICT.

BY ADV. SRI.ESM.KABEER
SRI.K.E.HAMZA

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.
2. THE DIRECTOR OF COLLEGIATE EDUCATION,
TRIVANDRUM.
3. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOTTAYAM.
4. THE REGISTRAR,
MAHATMA GANDHI UNIVERSITY, KOTTAYAM.
5. THE PRINCIPAL,
ST.STEPHEN'S COLLEGE, UZHAVOOR, KOTTAYAM DIST.

R4 BY ADV. SRI.V.K.MUHAMMAD YOUSUF, SC, M.G.UTY.
R1 TO R3 BY SHRI P.A. SALIM, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/03/2007, THE COURT ON 28/3/2007 DELIVERED THE
FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE ORDER DATED 11.12.91 OF R2

EXT.P2-TRUE COPY OF ORDER OF R2 DATED 4.2.2002

EXT.P3-TRUE COPY OF ORDER OF MANAGER DATED 8.1.2001

EXT.P4-TRUE COPY OF ORDER OF THE GOVERNMENT DATED 29.12.2000

EXT.P5-TRUE COPY OF ORDER OF THE M.G. UNIVERSITY DATED 7./3/2000

EXT.P6-TRUE COPY OF ORDER DATED 8.2.2001 OF THE DY. DIRECTOR

EXT.P7-TRUE COPY OF LETTER OF R2 DATED 27.11.2001

EXT.P8-TRUE COPY OF ORDER OF R2 DATED 17.5.2002

EXT.P9-TRUE COPY OF ORDER OF GOVERNMENT DATED 3.11.2001

EXT.P10-TRUE COPY OF JUDGMENT IN WPC 36009/2003 DATED 5.7.2004

EXT.P11-TRUE COPY OF ORDER OF R2 DATED 13.10.2004

EXT.P12-TRUE COPY OF ORDER DATED 23.11.2004

EXT.P13-TRUE COPY OF STATEMENT SHOWING THE NUMBER OF PERSONS WORKING AS
ON 1.2.2001

EXT.P14-TRUE COPY OF GO DATED 28.7.2005

// TRUE COPY //

P.S. TO JUDGE

T.R. Ramachandran Nair, J.

W.P.(C).NO.5209 of 2005-T

Dated this the 28th day of March, 2007

JUDGMENT

Aggrieved by the denial of approval of her appointment as a last grade servant, the petitioner has filed this writ petition. The petitioner's husband T.C. Kora was working as a U.D. Clerk in the St. Stephen's College, Uzhavoor. Consequent on the death of her husband, the petitioner applied for compassionate appointment under the dying in harness scheme. The claim for compassionate appointment required prior concurrence of the Government and the sanction of the University. Herein, Mahatma Gandhi University as per Ext.P5 dated 7.3.2000 accorded sanction for effecting appointment of the petitioner as last grade staff in the college under the dying in harness scheme by relaxing conditions stipulated under Statutes 45, 47 and 48 of Chapter 46 of the Mahatma Gandhi University Statutes, 1997. This approval was subject to the concurrence of the Government. The Government subsequently granted concurrence as evidenced by Ext.P4 dated 29.12.2000. The said communication issued by the Principal Secretary to the Government, Higher Education (D) Department, to the Director of Collegiate Education, Trivandrum conveyed the Government's

no objection for the appointment of the petitioner as last grade staff in the college if educationally qualified, in relaxation of existing rules of appointment and also subject to the condition that she should be accommodated within the sanction staff pattern. By Ext.P3 order dated 8.1.2001, the management appointed the petitioner as last grade staff in the vacancy of Smt. A.U. Aleyamma who was promoted and transferred to B.C.M. College, Kottayam. It is accordingly that the petitioner was granted appointment. The petitioner's husband expired on 31.10.1999 while in service as U.D. Clerk in the same college.

2. Thereafter, even though approval of appointment was sought, that was not granted by respondents 2 and 3, consequent on which the petitioner could not draw her salary so far. During the relevant time some other promotions have also been made by the management (i.e. during 1999-2000). There was unreasonable delay in granting approval for the promotions of non-teaching staff. It appears that the delay occurred in view of the ban on appointments introduced by the Government consequent on the delinking of Pre-degree courses.

3. Ten members of the non-teaching staff of the college including the petitioner approached this court by filing Writ Petition No.36009/2003 seeking appropriate reliefs and for getting approval of the appointments. This court by Ext.P10 judgment dated 5.7.2004, held as follows:

“ If the promotions of the petitioners are made on the basis of the then existing Government orders, there is no justification in not approving the promotions on the ground of a subsequent Government Order. The subsequent Government orders Exts.P11, P12 and P13 can have only prospective effect. In the above circumstances, I direct the first respondent to consider Ext.P20 and pass appropriate orders thereon in the light of the observations made in this judgment. This shall be done within a period of two months from the date of production of a copy of this judgment.”

Thereafter, the second respondent herein passed an order Ext.P11 which was not in compliance with the above directions. The result of the above order was that the approval was not granted. It is averred by the petitioner that a Contempt of Court Case was filed against the Government and the Director of Collegiate Education and on getting information about the C.C.C., the Director of Collegiate Education passed an order Ext.P12 whereby all promotions upto 1.2.2001 have been approved and the petitioner alone was singled out. The reasons stated in Ext.P12 is that the case of the petitioner is a fresh appointment and not a promotion and that the Government ban on appointment to all entry level posts of non-teaching staff in private aided colleges was in force on the date of appointment of the petitioner. The post of last grade servant is an entry level post.

4. The petitioner submits that at the time when she was appointed, the staff pattern in force was the one evidenced by Ext.P1 dated 11.12.1991. It is an order of the Director of Collegiate Education, Thiruvananthapuram providing the staff pattern. As per the same, the sanctioned strength of

peons is 10. On 4.2.2002, the second respondent issued a revised order Ext.P2 fixing the new staff pattern, whereby one post of Peon is shown as excess. It is pertinent to note that the petitioner was appointed while Ext.P1 staff pattern for non-teaching staff was in force and the post to which she was appointed was within Ext.P1 staff pattern. In Ext.P2, there is no indication that reduction of post will affect the existing incumbents adversely and there is no direction to retrench anybody including the petitioner.

5. Therefore, the question whether petitioner's appointment ought to have been approved by the second respondent, has to be considered in the light of the above background.

6. The reasons in support of Ext.P12 attributed by respondents 1 to 3 in the counter affidavit are that pursuant to the National Education Policy Pre-degree courses were delinked from 2000-2001 onwards and by circular dated 24.4.1997 ban on appointment/creation of posts and promotion, etc. was ordered by the Government. It is therefore contended that the appointment of the petitioner on 8.1.2001 is after imposition of the ban and therefore the said appointment could not be approved by the second respondent. It is further stated that even if there were vacancies as per the staff strength sanctioned in Ext.P1, the vacancies could not have been filled up, as the Empowered Committee is the authority competent to give prior

concurrence for making appointments. It is also contended, strangely, that Ext.P6 letter issued by the second respondent to the petitioner stating that the Government has informed that it has no objection for appointing the petitioner, may not be reckoned as valid, to substantiate the claim of the petitioner.

7. Before considering the issue, it is necessary to mention one more document produced by the petitioner marked as Ext.P9. The same is dated 3.11.2001. By Ext.P9, the Government directed the second respondent to continue the existing staff pattern in the college in question till revised norms are prescribed for fixing staff pattern in private colleges.

8. The petitioner was appointed under the dying in harness scheme consequent on the death of her husband who was a U.D. Clerk. The petitioner was appointed in the promotion vacancy of Smt.A.U. Aleyamma whose promotion stands approved as per Ext.P12 along with other members of the non-teaching staff. Therefore, when the petitioner was appointed there was a clear existing vacancy which was a regular one also. Going by Ext.P1 staff pattern, 10 posts of Peon are sanctioned and the post to which the petitioner was appointed comes within the above staff pattern also. The revision of staff pattern by Ext.P2 is one year after the appointment of the petitioner and even though one post is shown as excess, there is no direction to retrench anybody. Ext.P2 therefore does not adversely affect the right of

the petitioner to hold the post in question. Apart from that, she was appointed in a promotion vacancy of Smt. Aleyamma.

9. Then the further question is whether the stand taken by respondents 1 to 3 that there should have been separate approval/prior concurrence by the Government, is correct. It is clear from Ext.P5 that the University has accorded sanction for effecting her appointment under the dying in harness scheme by relaxing the conditions stipulated under Statutes 45, 47 and 48 of Chapter 45 of the Mahatma Gandhi University Statutes, 1997. The said statutes refers to the method of appointment by way of a selection process and obviously that was relaxed for appointing the petitioner under the dying in harness scheme. It is thereafter that the Government by Ext.P4 conveyed no objection for appointment of the petitioner “in relaxation of the existing rules of appointment”. Again by Ext.P6 the second respondent had informed the petitioner that the Government has informed their no objection for her appointment and the Principal has been informed accordingly. It is accordingly she was appointed as per Ext.P3. When the Government in Ext.P4 clearly stated that no objection is granted for appointing the petitioner in relaxation of the existing rules of appointment, the question of further getting approval from the Empowered Committee does not arise. Otherwise, in Ext.P4 the Government would have stipulated that the management should get

concurrence from the Empowered Committee. As long as no such condition has been imposed in the above proceedings by the Government itself, the appointment of the petitioner as per Ext.P3 is perfectly valid and legal. It is clear that Ext.P4 contains no objection by the Government itself and Empowered Committee cannot obviously sit in judgment of the said proceedings issued by the Government. Even if it was referred to the Empowered Committee, they could not have overruled Ext.P4 as it reflects the decision of the Government itself. Hence, the requirement of prior concurrence from the Empowered Committee even after the decision of the Government is an empty formality. Apart from that, this is an employment under the dying in harness scheme which is being granted in relaxation of the rules for which the no objection from the Government itself was necessary, obviously, apart from the concurrence of the University. Therefore, it is idle to contend that in the absence of a prior concurrence from the Empowered Committee, the appointment could not have been effected.

10. There is on more aspect of the matter. Going by Ext.P1, there are 10 posts of Peon and Ext.P2 came into existence only on 4.2.2002, after the appointment of the petitioner. Therefore, at the time of appointment of the petitioner, as Ext.P1 alone was in force, Ext.P2 could not have adversely affected the appointment. Ext.P6 communication issued by the Director of

Collegiate Education to the petitioner also will show that they also understood Ext.P4 as a competent proceedings issued by the Government giving a green signal for the appointment. When the second respondent himself has informed of the same to the Principal, they cannot now insist for the position that the prior concurrence of the Empowered Committee was required. In the absence of any such stipulation in Exts.P4 and P6 requiring the management to move the Empowered Committee in the matter, the said contentions are without any substance.

11. The petitioner had approached this court earlier in Writ Petition No.36009/2003, she being the 8th petitioner in the said writ petition. In the judgment in the above writ petition, this court was pleased to note that “if the promotions of the petitioners are made on the basis of the then existing Government orders, there is no justification in not approving the promotions on the ground of a subsequent order. The subsequent Government orders Exts.P11, P12 and P13 can have only prospective effect.” This finding is binding on respondents 1 to 3. Hence, Ext.P2 or any subsequent orders can only apply prospectively and as the petitioner was appointed on 8.1.2001, subsequent orders, if any, in the matter of fixing of staff pattern will not adversely affect her appointment.

12. Apart from that, the appointment of the petitioner is under the dying in harness scheme. An appointment on compassionate ground is to

alleviate the hardship of the family consequent on the death of the breadwinner while in service. Therefore, utmost expedition is required so that the family can tide over the difficulties. If such appointments are unduly delayed, and no salary is paid to the dependant, herein the widow, the purpose of the appointment itself will be defeated. This aspect of the matter has not been properly weighed with respondents 1 to 3. In regard to the question whether denial of appointment in such cases can be justified, the Honourable Supreme Court in the decision reported in **Smt. Sushma Gosain and others v. Union of India and others** (AIR 1989 SC 1976) held in paragraph 9 as follows:

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

The importance of providing of an appointment in such cases is evident from the direction that even supernumerary post should be created to accommodate the hapless victim. This court in **Brijithamma v. State of Kerala** (1990 (1) KLT 399) has spoken in similar terms following the above decision of the Apex Court. It was held in paragraph 4 as follows:

“4. The need to provide support to dependents of employees dying

in harness cannot be over emphasized. It has found statutory recognition in the rules. Such humane provisions must be implemented in the spirit in which they are conceived and must not be left as antiques on the mantelpiece. In applying procedural regulations, the letter of law should not be read to its bitter end.”

In view of the dictum laid down by the Apex Court and this court, there is no justification in the technical objection raised by respondents 1 to 3. Even if by subsequent orders one post of Peon had become excess, the petitioner should have been accommodated in a supernumerary post and approval ought to have been granted otherwise the purpose of the appointment will itself be defeated. It is averred by the writ petitioner that after the death of the husband of the petitioner, the family is put to real hardship and the petitioner is working without any salary and has to toil hard to maintain her family including her children. While passing Ext.P12, the second respondent has accorded sanction approving the promotions of all other members of the non-teaching staff and the petitioner alone was singled out for a different treatment. The reason stated to single out her are arbitrary and the attitude is totally discriminatory also. The second respondent did not even refer to the no objection issued by the Government and the sanction accorded by the University in regard to her appointment. Since the Government itself has granted the no objection for her appointment in relaxation of the existing rules of appointment, it is plain and clear that the ban on appointment has itself been relaxed with regard to

her appointment. It cannot be said that the Government was unaware of the ban on appointment by passing Ext.P4. In this view of the matter also, Ext.P12 as far as it refuses to approve the appointment of the petitioner is arbitrary and illegal and I declare so.

13. Accordingly, the writ petition is allowed and the second respondent is directed to approve the appointment of the petitioner as per Ext.P3 with effect from 8.1.2001 and to disburse her salary including arrears and other monetary benefits flowing therefrom. The needful in the matter will be done by respondents 1 to 3 within a period of two months from the date of receipt of a copy of this judgment. No costs.

(T.R. Ramachandran Nair, Judge.)

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